

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re: Petition of City of Waltham

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D.T.E. 02-11

REPLY BRIEF OF BOSTON EDISON COMPANY D/B/A NSTAR ELECTRIC

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Date: May 14, 2002

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I. INTRODUCTION

Boston Edison Company d/b/a NSTAR Electric (the “Company”) files this Reply Brief in the above-referenced proceeding. This Reply Brief responds to the initial brief filed by the City of Waltham (“Waltham”) on May 9, 2002 (the “Waltham Initial Brief”). The Company’s Initial Brief demonstrates that it has justified its methodology for pricing Waltham’s streetlights. The Company presented its direct case during the proceeding, which was supported by expert testimony and subjected to cross-examination by the Department and Waltham. Accordingly, the Company’s Initial Brief cites to record evidence in this proceeding to support its argument regarding the propriety of its methodology to price streetlights for sale to Waltham.

However, Waltham’s Initial Brief fails to cite to any record evidence in support of its position (because it offered none). Moreover, after inappropriately attempting to introduce late-filed documents (the “Documents”) into the record after the close of the hearing in this proceeding, Waltham egregiously attempts in its Initial Brief to supplement those Documents with additional “information” that has neither been authenticated nor subjected to cross-examination. Although the Company has demonstrated that Waltham’s counsel’s conclusions about the Documents are erroneous and irrelevant to the proceeding, the Department should not condone Waltham’s attempt

to foist information onto the record by giving any weight to the Documents or Waltham's counsel's allegations relating to the Documents.¹

In the Company's Reply Brief, the Company will address only those arguments contained in Waltham's Initial Brief that require additional comment. However, silence on any issue should not be construed as agreement with any statement made by Waltham. As described in the Company's Initial Brief, the Company's methodology for calculating the price of streetlights for Waltham is consistent with G.L. c. 164, § 34A ("Section 34A"), which governs the sale of streetlights by electric companies to municipalities, as well as Department precedent, and should be approved by the Department.

II. ARGUMENT

Waltham makes three general arguments in its Initial Brief. First, apparently in further response to the Company's Motion to Dismiss (see Tr. at 26; Company Response to Waltham's Reply to Company's Motion to Dismiss (April 23, 2002)), Waltham continues to argue that, not only should the Department deny the Company's Motion to Dismiss, it should deny the Company's right to make the motion at all (Waltham Initial Brief at 1-5). However, Waltham's Initial Brief includes an additional argument stating that, not only should the Company be denied the right to move to dismiss the proceeding, the Company should also be denied the right to oppose Waltham's attempt to file late-filed documents (id., at 4). Second, Waltham argues that the Company has not calculated the purchase price for Waltham's streetlights in a manner consistent with Section 34A

¹ In that regard, the Company moves to strike pages 9 through 14 (up to the "Conclusions" heading) of Waltham's Initial Brief.

(id. at 5-8).² Third, Waltham argues that its late-filed Documents do not support the Company's testimony in this proceeding (id. at 9-14).

Regarding Waltham's arguments opposing the Company's right to file motions in this proceeding, the Company will not reiterate its previous argument on this issue, except to note the absurdity of Waltham's new argument that the Company has no right to oppose Waltham's attempt to influence the Department improperly through extra-record information.³ Instead, the Company refers the Department to its Reply to Waltham's Response to the Company's Motion to Dismiss, filed on April 23, 2002, to address Waltham's arguments on pages 1-5 of its Initial Brief. However, the Company responds to Waltham's remaining arguments below.

A. The Company Has Demonstrated That Its Methodology for Pricing Waltham's Streetlights for Sale Is Consistent with G.L. c. 164, § 34A.

The crux of Waltham's argument on pages 5 through 8 of its Initial Brief is that the Company has failed to demonstrate that its purchase price for Waltham's streetlights complies with Section 34A, alleging that the Company failed to use Waltham-specific data in its calculations. However, the Company has established the streetlight value under Section 34A through: (1) the testimony of an expert witness, who was subjected to cross-examination by the Department and Waltham; (2) responses to multiple discovery questions issued by the Department; and (3) the Affidavit submitted by Bryant K.

² Waltham raises an issue in its Initial Brief regarding the "contractual" net book value of Waltham's streetlights that was not raised during the proceeding, citing to the Company's responses in Exhibits DTE-1-1 and DTE-1-2 (see Waltham Initial Brief at 5-6). For the record, the Company's calculations in Exhibits DTE-1-1 and DTE-1-2 were performed in order to answer the Department's discovery questions seeking a comparison of purchase prices for Waltham's streetlights using different allocation methodologies. The Company is unclear regarding the relevance of the "contractual" net book value of Waltham's streetlights in the context of these Exhibits, or the relevance of the issue in general.

³ Apparently, Waltham is comfortable ignoring the Department's regulations (see 220 C.M.R. 1.11(7)) when it suits its own purposes.

Robinson on April 29, 2002. In addition, the information offered by the Company through its witness and responses to discovery questions is based on the Company's actual gross investment and accumulated depreciation for streetlights in Waltham, as referenced in Exhibit W-2. On the contrary, Waltham has offered no evidence that the Company's allocation methodology is inconsistent with Section 34A or is otherwise "unfair."

Waltham makes specific allegations on pages 5 and 6 of its Initial Brief that "[t]he Company's purchase price does not comply with [G.L. c.164, § 34A]" and that "[t]he Company has the affirmative obligation to develop a purchase price that complies with the statute." However, Waltham has offered no evidence to support what it would deem to be a purchase price that "complies with the statute." The only factor cited by Waltham that it believes relevant to a determination of a "proper" sales price is whether the information used by the Company to determine such a price is "Waltham specific" (see id. at 7-8). If the use of Waltham-specific data is the only criterion necessary to meet the Department's standard of review under Section 34A, then the Department should rule in favor of the Company, because the figures it used to allocate the gross investment and accumulated depreciation in the Company's Waltham streetlighting accounts 632, 633, 634 and 637 (the "Common Plant Accounts") to accounts 635 and 636 are Waltham-specific gross investment and accumulated depreciation figures (see Exhibit W-2).⁴

⁴ Waltham's cites to Cape Light Compact, D.T.E. 01-25 (2001) as support for its contention that "town-specific data" is necessary to calculate the purchase price of streetlights pursuant to Section 34A (Waltham Initial Brief at 7). However, the issue of the use of town-specific data arose in D.T.E. 01-25 only because Commonwealth Electric Company did not maintain information on streetlight retirements on a town-by-town basis and thus, was required to calculate the purchase price for municipal streetlights sold in its service territory using system-wide depreciation data. Boston Edison Company, in contrast, used Waltham-specific gross investment and accumulated depreciation figures to calculate the price of Waltham's streetlights, because such information has been maintained historically on a town-by-town basis.

However, the Company did more than just use Waltham-specific data to establish the streetlight value in this proceeding. In order to demonstrate its compliance with Section 34A, the Company outlined in detail the factors that must be considered in determining its unamortized investment in each component of its streetlight plant in order to calculate a purchase price for streetlights, including a determination of the Company's gross investment and accumulated depreciation in each of its Waltham streetlighting accounts (Company Initial Brief at 4-7; see also Petition of the Towns of Lexington and Acton, D.T.E. 98-89, at 3 (1998)). In addition, the Company demonstrated through expert testimony that its methodology for allocating its gross investment and accumulated depreciation (the components of "unamortized investment") from its Common Plant Accounts to accounts 635 and 636 is based on principles of cost causation (Company Initial Brief at 7, citing Tr. at 37; Exh. BEC-BKR at 7, 9; Exh. DTE-1-9).

Moreover, the Company demonstrated that its assumptions regarding the vintages of streetlights in Waltham were based on the Company's actual gross investment and accumulated depreciation for streetlights in Waltham, as referenced in Exhibit W-2. Accordingly, contrary to the allegations of Waltham, the Company has demonstrated that its methodology for determining the price of streetlights in Waltham is consistent with Section 34A. Waltham has failed to demonstrate that the Company's methodology is in any way inconsistent with that statute, and, accordingly, the Department should reject Waltham's arguments on pages 5-8 of its Initial Brief regarding this issue.

Ultimately, the Company's case rests on an allocation methodology based, not on the preferences of Waltham or any other municipality, but on principles of cost causation. Thus, the Company's allocation methodology for the Common Plant Accounts is both

appropriate and fair. Although the Company has demonstrated the logic and soundness of its allocation methodology throughout this proceeding, it bears reiteration. Because the costs that are booked as the Company's gross investment for streetlighting plant are caused by gross-investment-related streetlighting costs, i.e., the original cost of the plant, the Company allocated the gross investment in the Common Plant Accounts to accounts 635 and 636 based on the ratio of gross investment in accounts 635 and 636 (80/20), i.e., an allocation of gross investment based on gross investment (see Tr. at 37; Exh. BEC-BKR at 7).

Similarly, because the amount of accumulated depreciation in the Common Plant Accounts is caused, in part, by the age or vintage of the property booked to such accounts, as influenced by the retirement of some of the property in such accounts, the accumulated depreciation in the Common Plant Accounts was allocated to the accumulated depreciation in accounts 635 and 636 based on the ratio of accumulated depreciation in accounts 635 and 636 (60/40), i.e., an allocation of accumulated depreciation based on accumulated depreciation. This methodology appropriately captures the vintage of plant in the Common Plant Accounts, as evidenced by the relative amount of accumulated depreciation in these accounts, and the relative amount of accumulated depreciation in account 636, for purposes of properly valuing the municipal and commercial streetlights for sale (see Exh. DTE-1-9). Accordingly, the Department should deny Waltham's Petition and rule in favor of the Company.

B. The Company Has Demonstrated That Waltham's Characterizations of its Late-Filed Documents Do Not Undercut the Company's Testimony in this Proceeding.

Waltham takes the liberty in its Initial Brief of citing to its late-filed (April 19, 2002) Documents to support its allegations regarding the Company's

testimony. However, the Department may not rely on any characterizations that Waltham makes regarding the Documents because neither of the Documents has been authenticated or subjected to cross-examination by the Company. For this reason alone, Waltham's argument on pages 9-14 (prior to the "Conclusions" heading) in its Initial Brief relating to the Documents should be stricken from the record of this proceeding.

Moreover, Waltham attempts on pages 12-14 of its Initial Brief to allege even more unsupported "facts" for the Department's consideration that are nowhere to be found in the record of this proceeding. If Waltham believed at any time during this proceeding that the information included on pages 12-14 of its Initial Brief was relevant to the Department's consideration of its Petition, it could have filed the Document (Waltham's self-designated Exhibit W-5) with the Department with supporting testimony from an expert witness at any time prior to, or on, the date of the Department's hearing on April 11, 2002. However, Waltham failed to do so, and has failed to demonstrate good cause why it should be allowed to file such information so late in this proceeding, without allowing the Company the opportunity to cross-examine a witness for Waltham. The Department should not condone Waltham's tactics of introducing unsupported information to support its Petition that is not in evidence in this proceeding. Any reliance on either of the Documents or the arguments in Waltham's April 19 Letter or Initial Brief related to the Documents would violate the Company's procedural due-process rights.

However, because a possibility exists that the Documents may be included in the record of this proceeding and given weight by the Department (see Hearing Officer Memorandum at 1 (May 2, 2002) "[t]he Department will rule on both the Company Motion and the Waltham Motion in its letter Order concerning this dispute"), the

Company must respond to Waltham's allegations in spite of the lack of foundation for the Documents on which Waltham bases its claims. Waltham's first allegation regarding the Documents is:

[t]he Company's documents do not support the proposition that support equipment supporting the municipal lights is newer than the support equipment supporting the private lights.

(Waltham Initial Brief at 9). Waltham makes additional arguments relating to this statement, attempting to undercut the Company's testimony by demonstrating a lack of correlation between the activity in the Company's Common Plant Accounts with that in accounts 635 and 636 (id. at 9-11).

First and foremost, the Company did not offer the Document in question (Waltham's self-designated Exhibit W-4) to support a proposition that the streetlight equipment "supporting the municipal lights" booked to the Common Plant Accounts is newer than the streetlighting plant booked to those accounts "supporting the private lights" and, indeed, the Company did not offer the Document at all (Waltham did). Nothing in "Exhibit W-4" provides any evidence whatsoever regarding which specific set of lights, municipal or commercial, are supported by any equipment booked to the Common Plant Accounts. The Company has testified that the equipment booked to the Common Plant Accounts generally supports *both* the municipal and commercial equipment, as logic would dictate. The Company has no documentation to show which set of lights is supported by specific equipment booked to the Common Plant Accounts. If such information were available, there would be no need to allocate any costs or accumulated depreciation from the Common Plant Accounts to accounts 635 and 636. Accordingly, Waltham's argument is specious on its face and Waltham's attempt on

pages 9-11 of its Initial Brief to correlate the costs and accumulated depreciation booked to the Common Plant Accounts to the costs and accumulated depreciation booked to accounts 635 and 636 should be rejected.

Waltham also alleges the following:

[t]he relative amount of accumulated depreciation in accounts 635 and 636 does not support the conclusion that the support equipment supporting the 635 account is newer than the support equipment supporting the 636 account.

(id. at 11). Waltham attempts to justify this statement by noting that:

[t]he theory advanced by the Company's attorney (but not confirmed by the Company's witness) was that it was reasonable to assume that the support equipment supporting the 635 account would have a similar vintage as the new sodium fixtures in Waltham. The absence of any additions activity in the support accounts that was coterminous with the sodium fixture additions and the mercury fixture retirements in the 1987 to 1992 time period clearly refutes this theory.

(id.). To the contrary, the Company's attorney never made any statements, or offered any theory, about the relationship between the equipment supporting account 635 and sodium fixtures in Waltham. The only reference to sodium fixtures in Waltham was made by Waltham's counsel at the end of the evidentiary hearing (Tr. at 77-79). Moreover, there is nothing in the record to support Waltham counsel's statement noted above regarding "sodium fixture additions" and "mercury fixture retirements" during 1987-1992. The Department should reject Waltham's counsel's attempt to testify regarding streetlight activity in Waltham, unless counsel is willing to be subject to cross-examination by the Company.

Moreover, contrary to the protestations of Waltham's counsel, the relative amount of accumulated depreciation in accounts 635 and 636 is, indeed, relevant in drawing conclusions regarding the relative ages of the streetlight plant in these accounts. The

Company provided expert testimony to this effect (see Exh. DTE-2-5; Tr. at 75), a claim that cannot be made by Waltham's counsel to support his contrary conclusion. Accordingly, the Department should give limited weight to the testimony of the Company's expert witness, rather than the unsupported allegations of Waltham's counsel, using information outside of the record of this proceeding, and conclude that the Company's methodology for allocating gross investment and accumulated depreciation from the Common Plant Accounts to accounts 635 and 636 is appropriate and consistent with Section 34A.

Lastly, on pages 12 to 14 of Waltham's Initial Brief, Waltham makes two allegations, supported by numerous additional detailed claims, regarding the relationship between "the streetlight tariff" and the streetlights booked to account 636, citing to "Exhibit W-5" (id. at 12-13). First, neither "Exhibit W-5," nor any of the information offered on these two pages of the Waltham Initial Brief, is in the record of this proceeding and accordingly, the Department can give this information no weight in its deliberations.

Moreover, the information offered by Waltham's counsel on pages 12-14 of Waltham's Initial Brief is irrelevant to the proceeding. As noted by Mr. Robinson in his Affidavit filed on April 19, 2002, and as described in Exhibit DTE-2-2, the Company's methodology for pricing streetlights pursuant to Section 34A, which is consistent with the Department's order in Boston Edison Company, D.T.E. 98-89 (1998), is different from its methodology for calculating streetlight expense for ratemaking purposes (Robinson Affidavit at 5-6). Accordingly, the Company's past collection of costs through rates relating to investment in account 636 has no direct bearing on the price of the streetlights

in Waltham in the context of a sale. Therefore, the Department should reject the arguments offered by Waltham on pages 12-14 of its Initial Brief because it is: (1) extra-record evidence, without good cause cited to support its inclusion in the record of this proceeding; and (2) irrelevant to Waltham's Petition.

III. CONCLUSION

The Company has demonstrated that its methodology for valuing Commonwealth's streetlights in Waltham is consistent with Section 34A. Moreover, Waltham has failed at every opportunity either to present an alternative methodology for the Department's consideration or to discredit the methodology used by the Company. Accordingly, the Company requests that the Department deny Waltham's request to order the Company to recalculate the purchase price of Waltham's streetlights.

Respectfully submitted,

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Date: May 14, 2002